



	:	<b>STATE OF NEW JERSEY</b>
	:	
In the Matter of David Kelso, <i>et al.</i> ,	:	<b>FINAL ADMINISTRATIVE ACTION</b>
Asbury Park Police Department	:	<b>OF THE</b>
	:	<b>CIVIL SERVICE COMMISSION</b>
	:	
CSC Docket Nos. 2018-2634, <i>et al.</i>	:	
	:	
	:	Classification Appeals
	:	
	:	
	:	

**ISSUED:** May 2, 2018 (RE)

Asbury Park appeals the effective dates of the decisions of the Division of Agency Services (Agency Services) that the proper classification of the position of David Kelso as Deputy Police Chief was February 28, 2017, the proper classification of the position of Joseph Spallina as Police Sergeant was February 28, 2017, and the proper classification of the position of Guy Thompson as Police Captain was January 6, 2017. These appeals have been consolidated due to common issues.

By way of background, Kelso, Spallina, and Thompson filed for classification reviews of their positions. Agency Services upheld the appeals and determined that each of the employees were properly classified in the requested higher titles. In its determinations dated February 5, 2018, Agency Services determined the effective dates for the promotions of Kelso, Spallina, and Thompson as February 28, 2017, February 28, 2017, and January 6, 2017, respectively. However, Asbury Park has provided appointment dates of September 21, 2017, May 1, 2017 and April 1, 2017, respectively.

On appeal, the appointing authority does not contest the duties of the positions, but states that promotions could not happen as there are no open slots in its Table of Organization. It explains some that promotions were completed upon retirement of a Deputy Police Chief and it requests that the promotions “be overturned” as they have since been promoted “in a manner not to violate the City’s Table of Organization.

## CONCLUSION

*N.J.A.C.* 4A:3-3.9(e)3ii states that, in local service, the effective date of reclassification shall be “the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission.” *N.J.A.C.* 4A:3-3.9(f) states that the decision by the Commission is the final administrative determination.

In this case, Agency Services received the reclassification request for Kelso and Spallina on February 28, 2017 and Thompson’s on January 6, 2017. As such, Agency Services correctly determined the effective dates as February 28, 2017, February 28, 2017, and January 6, 2017. *See N.J.A.C.* 4A:3-3.9(e)3ii. Asbury Park requests later appointment dates of September 21, 2017, May 1, 2017 and April 1, 2017 based on their promotional practices and Table of Organization. It does not contest that Kelso, Spallina, and Thompson were performing the duties of higher level titles at the time that they filed their classification reviews, or that they filed their requests for classification reviews at a later date.

First, it must be emphasized that the appointing authority has the right to determine the organizational structure of its operation. The New Jersey Administrative Code does not mandate that local jurisdictions spend funds to make promotional appointments, and the Commission does not have any authority over fiscal decisions of local jurisdictions. As long as there are no improper reporting relationships or misclassifications, how the office is organized or how often the office is reorganized is not under the jurisdiction of the Commission or reviewable in the context of a classification appeal.

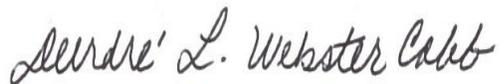
However, the Commission’s determination is controlling regarding proper position classification. *See e.g., In the Matter of Lawrence Craig and Louis Muzyka, Borough of Carteret* (CSC, decided February 11, 2009). If Asbury Park disagreed with Agency Services’ February 5, 2017 determinations in these matters, within 30 days of those decisions, in accordance with *N.J.A.C.* 4A: 3-3.5(c)1, it had the option to remove the higher level duties and assign these employees duties commensurate with their permanent titles. There is nothing in the record evidencing that Asbury Park exercised this option or that the effective dates established by Agency Services were not in compliance with *N.J.A.C.* 4A:3-3.9(e)3ii. Additionally, the Table of Organization is used to determine improper reporting relationships, but does not establish the classification of a position, which is determined by the duties assigned to the position. The Commission cannot rely on a previous Table of Organization to assign an effective date. If the appointing authority was not ready to reclassify the positions in January and February 2017, it should not have assigned out-of-title work.

**ORDER**

Therefore, it is ordered that these appeals be denied, and the records of Kelso, Spallina, and Thompson be corrected to reflect provisional appointments to the dates provided for in Agency Services' determinations.

This is the final administrative determination in this matter. Any further review is to be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2nd DAY OF MAY, 2018



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and  
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c: David Kelso (CSC Docket No. 2018-2634)  
Joseph Spallina (CSC Docket No. 2018-2633)  
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